

REMARKS

Claims 1 and 7 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite. The Examiner has objected to the recitation that the auxiliary system is forward of the farthest rearward point of the truck. The claims have been amended to recite that the auxiliary system is forward of the farthest rearward point of the hopper. Support for this amendment is seen in FIG. 3A and in the detailed description of the invention. This amendment complies with the Examiner's suggestion, and entry is respectfully requested. It is also respectfully submitted that the amendments do not require any additional searching, specifically in view of the fact that the Examiner properly considered the limitation of the hopper rather than the truck body in the application of the present references to the claims as discussed below.

Claims 1-5, 7-9 and 11-14 have been rejected under 35 U.S.C. 103(a) as unpatentable over Applicant's Prior Art in FIG. 1 in view of Christenson et al. USPN 4,705,133 (Christenson '133). Applicant respectfully traverses this rejection for the following reasons. It is noted that all of the independent claims, namely claims 1, 2, 7, 8, and 13, have been amended to recite that the auxiliary axle system, specifically the pair of auxiliary wheels, always remains forward of the farthest rearward point of the hopper.

In order to reject a claim under 35 U.S.C. § 103 as being obvious over the prior art, all of the claim limitations must be taught or suggested. See M.P.E.P. 2143.03, citing In re Royka, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Christenson '133, which is a ready-mix cement truck and not a concrete pumping truck, and does not include a hopper. Both the funnel like opening 14 at the upper rear end of mixer drum 13 and chute 15 are positioned well above the tag axle assembly of Christenson '133. This is in contrast to the location of a hopper of a concrete pump truck, which is attached to the rear end of the truck at a lower most position to facilitate filling the hopper with concrete from the chute of a concrete mixer truck. It is a primary object of Christenson '133 that the auxiliary axle moves by actuation of a single hydraulic ram (column 2, lines 47-50) and it is improper to modify a reference to obviate one of its stated objects, absent some suggestion in the

prior art. No such suggestion exists. The Examiner has stated that auxiliary axles “help to distribute the weight of the vehicle and its load” but the Christenson ‘133 axle functions to support weight, to the extent that it does, outside the vehicle rather than under the vehicle as is done by Applicant. The entire point of Christenson ‘133 is to extend the back axle further back so as to qualify for heavier weights, as noted on column 1, lines 29-36. There is also no recognition that the wheels should be out of the way of a hopper (which Christenson ‘133 does not have) so that the hopper can be filled. Withdrawal of this rejection is requested.

Claims 1-5, 7-9 and 11-14 have been rejected under 35 U.S.C. 103(a) as unpatentable over Applicant’s Prior Art in FIG. 1 in view of Christenson et al. USPN 4,762,421 (Christenson ‘421). Applicant respectfully traverses this rejection for the following reasons.

Like Christenson ‘133, Christenson ‘421 does not disclose a concrete pumping truck. Thus, it does not recognize the need for access to a hopper at the lower, rearmost location of the truck. This places requirements on a tag axle that are not contemplated by Christenson ‘421. Christenson ‘421 has a specific object of providing a linear actuator for the axle from a road engaging position to an elevated position straddling the sides of the truck frame. See column 3, lines 6-10. In addition, see column 4, lines 32-37, where the device functions to move the “auxiliary axle between its extended road engaging position shown in FIG. 1 and its retracted stowed position shown in FIG. 3” (emphasis added). It is impossible to modify Christenson ‘421 without departing totally from the function of that reference, and there is no suggestion in any of the art that would suggest otherwise. Christenson ‘421 does not address the problem of having a hopper at the lower rear end of the truck, and does not suggest what would need to be done to provide a tag axle for a concrete pumping truck.

The Examiner has stated that Christenson ‘421 shows an auxiliary axle system having a U-shaped frame denoted as elements 24 and 12, 12’, as well as portions of 11, 11’. This interpretation ignores the presence of cross member 28 which clearly prevents the Christenson’s system from functioning on a concrete pumping truck, not only because Christenson ‘421 does not suggest a pumping truck, but also because reading column 45, lines 17-21, clearly does not describe

or even admit the possibility of a U-shaped frame. Elements 11 and 12 pivot with respect to each other as the device functions to extend the wheels of the tag axle outward and further rearward of the drum outlet and the chute (both of which are located well above and out of the way of the tag axle). Again, Christenson '421 does not contemplate supporting a cement pumping truck with the supports under the weight of the vehicle so that it does not extend out from the back to a space that interferes with a hopper (which Christenson does not disclose).

The Examiner makes reference to Smith et al. on page six, second full paragraph of the present Office Action, and on page four, last paragraph. It is noted that Smith et al. has been cited in prior Office Actions, but not applied in this present Office Action. Smith et al. of course has its primary goal of extending the distance between the axles of its design, again contrary to the claims currently pending in this instant application.

The Examiner has stated on page 6 of the current Office Action that "when the auxiliary axle is adapted to the Prior Art concrete pumping truck, the spatial relation of 'not extending rearward of the hopper' would be met." This is not true. That is not an automatic result using either of the Christenson patents, and in fact is contrary to their teaching. One does not "adapt" a prior art concrete pumping truck by putting on an axle system of a concrete mixer truck that would not work on a concrete pumping truck, the axle distances (in all the references) to therefore modify the axle system added so it does not go back further than the hopper. Absent some motivation to make this significant departure from the clear teachings of all the cited art, such modification is improper.

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Application No.: 10/718,181

-12-

In view of the foregoing, claims 1-17, as presently amended, are in condition for allowance. Notice to that effect is respectfully requested. The Examiner is invited to contact the undersigned at the telephone number listed below if such a call would in any way facilitate the allowance of this application.

Respectfully submitted,

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Date: 11/9/07

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